

Boota Singh

Vs

Sher Singh and Others

Civil Appeal No. 925 of 1995

(CJI A.M. Ahmadi, B.N. Kirpal JJ)

13.03.1996

ORDER

1. The appellant, Boota Singh, the unsuccessful candidate challenged the election of Respondent 1 Sher Singh to the Punjab Legislative Assembly on certain grounds including resort to corrupt practices. The allegation in regard to corrupt practices were set out in paras 8 to 12 of the appeal. The affidavit to Form 25 was also appended to the appeal. A preliminary objection was raised that the appeal was not maintainable inasmuch as the particulars regarding the corrupt practices had not been given and the copy of the affidavit in Form 25 was defective. The learned Single Judge in the High Court relying on the decisions of the High Courts of Bombay and Punjab and Haryana in *Purushottam v. Returning Officer* (AIR 1992 Bom 227) and *Iqbal Singh v. Avtar Singh* (AIR 1993 P&H 314 : (1993) 2 Punj LR 255) concluded that the appeal as well as the copy of the affidavit in Form 25 did not conform to the requirement of Section 31(3) of the Representation of the People Act, 1951 and, therefore, the appeal was liable to be dismissed. Reliance was also placed on the decision in *Mithilesh Kumar Pandey v. Baidyanath Yadav* ((1984) 2 SCC 1 : AIR 1984 SC 305) and *Rajendra Singh v. Usha Rani* ((1984) 3 SCC 339 : AIR 1984 SC 956), the former emphasising on the purity of elections and the latter emphasising on the respondent getting a correct copy of the document. Essentially, therefore, the view taken by the learned Single Judge was based on the earlier decision of the Court reported in *Iqbal Singh* case (AIR 1993 P&H 314 : (1993) 2 Punj LR 255).

2. Since then there have been pronouncements of this Court which were considered by this Court in an elaborate judgment rendered in the case of *F. A. Sapa v. Singora* ((1991) 3 SCC 375). In this decision, the earlier decision of this Court including the one in *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore* ((1964) 3 SCR 573 : AIR 1964 SC 1545) and *Manphul Singh v. Surinder Singh* ((1973) 2 SCC 599) as well as *K. M. Mani v. P. J. Antony* ((1979) 2 SCC 221 : (1979) 1 SCR 701) were relied on. This decision was rendered after the decision of the Bombay High Court came to be reported but before the decision of the High Court of Punjab and Haryana in *Iqbal Singh* case (AIR 1993 P&H 314 : (1993) 2 Punj LR 255). The judgment in *Iqbal Singh* case (AIR 1993 P&H 314 : (1993) 2 Punj LR 255) does not refer to the decision of this Court in *F. A. Sapa* case ((1991) 3 SCC 375). We are, therefore, inclined to think that the High Court omitted to consider the question regarding the impact of Section 81(3) of the Representation of the People Act in the light of the ratio and observations of this Court in *F. A. Sapa* case ((1991) 3 SCC 375). We, therefore, think it appropriate to remit the matter to the High Court for disposal after considering the impact of the decision in *F. A. Sapa* case ((1991) 3 SCC 375) as well as the earlier decision of this Court referred to therein.

3. In the result, we set aside the impugned order, remit the matter back to the High Court and direct

the High Court to reconsider the entire matter afresh in the light of what we have stated above. The appeal will stand disposed of accordingly with no order as to costs.